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No.

SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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QUESTIONS PRESENTED

1. Whether the Texas Courts violated compelling Federal Civil Rights policy by refusing to award attorney's fees to the Petitioner, a Prevailing Party, who obtained both: (1) preliminary injunctive relief; and (2) permanent injunctive relief, the totality of relief sought. (42 U.S.C. § 1988).

2. Whether the Texas Appellate Courts, in order for those Courts to avoid a confrontation with well–settled Federal policy in Civil Rights litigation, violated the equal protection rights of the Petitioner by refusing to acknowledge, consider, rule upon and grant Petitioner's properly perfected points of error requesting an award of attorney's fees. (U.S. CONST. amend. XIV).

3. Whether the Texas Appellate Courts, in order for those Courts to avoid a confrontation with well–settled Federal policy in Civil Rights litigation, violated the Petitioner's right to due process of law by refusing to acknowledge, consider, rule upon and grant Petitioner's properly perfected points of error requesting an award of attorney's fees. (U.S. CONST. amend. V and XIV).

4. Whether circumstances recommend that the Petitioner's award of attorney's fees should, in the interest of justice, be remanded to the State District Court for recalculation.

PARTIES BELOW

In the Court below, the Petitioner herein, Greg Jones, by and through his next friend, Larry Jones, was Petitioner. The Respondents, University Interscholastic League, and the Executive Committee of District 9AAAAA, were Respondents.

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No._____

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GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

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v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner, GREGORY JONES (hereinafter "Greg Jones"), A MINOR BY AND THROUGH HIS NEXT FRIEND, LARRY JONES, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the Supreme Court of Texas and the Texas Court of Appeals in this case.

OPINIONS AND JUDGMENT BELOW

The Supreme Court of Texas overruled the Petitioner's Motion for Rehearing on the 21st day of January, 1987. The Supreme Court of Texas overruled the Petitioner's Application for Writ of Error on the 17th day of December, 1986. The Court of Appeals' Opinion from which the Petitioner appealed to the Supreme Court of Texas was entered on the ~~18th~~ 23d day of ~~September~~ July, 1986.

JURISDICTION

The Order of the Supreme Court of Texas overruling the Petitioner's Motion for Rehearing was entered on the 21st day of January, 1987. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTES INVOLVED

United States Code, Title 42

Civil Rights Act

42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be

liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

42 U.S.C. § 1988

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adopted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the Court having jurisdiction of such civil or criminal cause is held as far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature in the infliction of punishment of the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, Title IX of Public Law 92–318, or the VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

U.S. CONST. amend. V

"No person shall be denied due process of law or be deprived of life, liberty, or property, without due process of law."

U.S. CONST. amend. XIV

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This Civil Rights case involves a former high school honor student's right to receive the full complement of educational development available to other, similarly situated students. The unlawful and bizarre conduct of the mature school administrators, who denied the Petitioner his educational opportunities, and, correlatively, his right to equal protection of the laws, occurred in connection with the denial of the Petitioner's request to participate in Texas interscholastic high school athletics sponsored by the University Interscholastic League (hereinafter "UIL").[1]

In the Fall of 1984, the Petitioner, then a junior in high school, moved with his family from Irving, Texas, to Highland Park, a municipality in Dallas County, Texas. As a result of the family's move, the Petitioner, Greg Jones, was required to submit a transfer request, a Previous Athletic Participation Form (hereinafter "PAP Form"), to the UIL in order to compete in UIL sponsored athletic programs at Highland Park High School (hereinafter "HPHS").[2]

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[1] This case is not a "no pass/no play" case. The Petitioner was an honor student and was well-respected by his peers and his teachers. (S.F. 541; Tr. at 48, 67–68, 71–72; Finding of Fact No. 1). A review of the Trial Court's Findings of Fact and Conclusions of Law, while brief, would be illuminating at this time. (Trial Court concluded that Petitioner's right to equal protection of the laws was violated under Supreme Court's standard announced in Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L.Ed. 220 (1886)).

[2] The PAP Form was customarily presented to the sending school [transferor–Irving] and, thereafter, presented to the receiving school [transferee–HPHS] for consideration. If both the "sending" and "receiving" schools approved the PAP Form, the request's approval was virtually automatic. In fact, no student in over thirty (30) years had been rejected

As HPHS was a member of UIL District 9AAAAA, the PAP Form was submitted to the District 9AAAAA Executive Committee (hereinafter the "Executive Committee"). The voting members of the Executive Committee were the Superintendents of the school districts constituting District 9AAAAA. In their absence, representatives of a given Superintendent would cast vote(s).[3]

The Executive Committee considered the Petitioner's PAP Form on March 20, 1985. In every other instance, a student's consideration has been perfunctory, as a fully executed PAP Form was self–proving. (S.F. at 83, 134–135, 161–62, 168–71, 208, 223–24, 281–82, 305, 403, 511; P.S.F. at 32, 85–88). Only in instances where the "sending" and "receiving" schools might not have completed the necessary documentation was there ever any question. Greg Jones' PAP Form was fully completed. (S.F. at 63–64, 552–63) (Greg Jones' application was "routine" according to the UIL's own witness, Coach Qualls). Because of the Executive Committee's rote routine, neither notice nor an opportunity to

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when both the "sending" and "receiving" schools had approved the transfer request. The particular certified PAP Form herein has been utilized for the past ten (10) years. No student, other than Greg Jones, who has submitted a fully executed PAP Form has ever been denied participation. In fact, students submitting incomplete PAP Forms have, nonetheless, been conditionally approved, so long as the PAP Form's completion was subsequently accomplished. (S.F. at 8–9, 63–64, 83–85, 134–35, 161–62, 168, 208, 236, 281–82, 305, 402, 499–500, 511; P.S.F. at 32–34, 85–91; Tr. at 46–48, 50–53; Findings of Fact Nos. 9–11, 13–21, 23–24, 26–28, 32–35, 37–39).

[3] Each school district casts one (1) vote for each high school in the respective District. Thus, since the Garland I.S.D. had four (4) high schools, its four vote majority, ipso facto, controlled the seven (7) vote determination in Greg Jones' case. (S.F. at 78–79; Finding of Fact No. 5.)

be heard was provided to any applicant, including the Greg Jones' family. Greg Jones was not provided with an opportunity to be heard, despite the Garland voter's expressed predisposition to reject Greg Jones' completed application. (S.F. at 78–79, 93–96, 141, 210, 212–18, 237–56, 283, 291–93, 348, 357–58, 567–69, 576–77, 580–91, 595, 600–01; P.S.F. at 41, 72–75, 77–79, 105, 116–17; Findings of Fact Nos. 15, 29).

In this case the system went haywire. As will be revealed hereinbelow, the bizarre conduct of otherwise mature, senior school administrators is explained only by their twisted preoccupation with winning high school football games. Greg Jones was a student sacrificed on the altar of Texas high school football. The sole motive for the sacrifice of this honor student was to prevent a competitor's "potential star Quarterback" from having an opportunity to orchestrate the defeat of the other schools in District 9AAAAA.[4]

Unlike every other transfer request in the history of District 9AAAAA, the District Judge found that the Executive Committee's consideration of Greg Jones' request was infected by: (1) unauthorized ex–parte communications between the Executive Committee's voting members; (2) an infusion of rampant rumor and anonymous phone tips; and (3) blatant misrepresentations of key facts and circumstances surrounding the Jones' family move to Highland Park. (S.F. at 84–85, 134–35, 167–68, 170–71, 175, 218, 234, 511,519, 557; P.S.F. at 32–34; Findings of Fact Nos. 9–11, 13–21,

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[4] Dr. Matthews, the Superintendent of the Wilmer–Hutchins school district, candidly admitted at trial that had the Petitioner's request concerned a minor sport, other than varisty football, his request would have been approved. (S.F. at 282–83).

23–24, 26–28, 32–35, 37–39).[5] The Executive Committee's denial of the Petitioner's request was ostensibly rendered, because the Jones family's move was "for athletic purposes."[6] However, as found by the Trial Court, such "reason" lacked any indicia of integrity. (Findings of Fact Nos. 22, 27; Conclusions of Law Nos. 3–4).

The Findings of Fact by the District Court comprehensively set forth the quasi–criminal nature of these administrators' collective misbehavior in connection with this single transfer request. Greg Jones was treated differently than all other similarly situated students who have ever sought similar approval for participation in UIL extracurricular activities. The Trial Court's supportive Findings of Fact and Conclusions of

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[5] It should be noted that in a "bootstrapping" effort to purge its discriminatory, arbitrary and capricious misconduct, the Executive Committee designed a second, "ad hoc" Hearing for August 9, 1985. Such Hearing, not otherwise provided under UIL procedures, was not sought by the Petitioner, who expressed his preference to continue to seek relief through a fair and impartial judicial system. (Findings of Fact Nos. 31–32).
Ostensibly, the Second Hearing was to incorporate certain remedial safeguards in order to correct the transgressions of the First Hearing. However, few, if any, of the pretextual safeguards were respected at this Second Hearing. The District Judge condemned the Second Hearing which was infected by the First. (S.F. at 30, 34, 60–61, 66–69, 71–72, 76–77, 278–83, 285–85, 290, 294–95, 381–82, 390–91, 444–59, 462–63, 466–69, 471–88, 491–94, 496–99, 501–02, 506–13, 517–20, 523–24, 567–69, 584, 586–89, 600–01, 614, 624; P.S.F. at 36, 71–72, 118–20; S.S.F. at 4, 5–6; Tr. at 38–39; Findings of Fact Nos. 31–39; Conclusions of Law Nos. 5–6).

[6] The University Interscholastic League athletic activities are governed by the UIL Constitution and Contest Rules (hereinafter "CCR"). Rule 409 of the CCR governs transfer eligibility. It prohibits participation by those students who "move for athletic purposes." The rule, itself, provides only one example of such a move–recruiting. the UIL made no assertion of any recruiting in the instant case. (Conclusions of Law Nos. 3, 4; C.C.R., Rule 409).

Law regarding the Defendants' denial of Greg Jones' right to equal protection of the laws illuminates the Defendants' loathsome behavior towards this lone student.

First, the Executive Committee members testified at trial that ex–parte communications between voting members should not occur in connection with a student's transfer request. Yet, the UIL witnesses admitted to such improper communications under adverse examination at trial. (Findings of Fact Nos. 14–18, 23–24, 26, 33–39; Conclusions of Law Nos. 2, 5-6).

Second, the Executive Committee members testified that anonymous telephone calls are unreliable and that such communications should not be injected into administrative decisions on transfer requests. Yet, an alleged "anonymous phone call" was admittedly injected by the Chairman of the Executive Committee into the Greg Jones deliberations preceding the vote of rejection. (Findings of Fact No. 14, 24).

Third, the Executive Committee members uniformly testified that a fair and impartial hearing on a student's transfer request was absolutely essential to the fair and even–handed administration of student affairs, including the relevant transfer request. (S.F. at 18–34, 51–52, 79–80, 90–105, 107, 136–38, 144, 177–82, 203–05, 221–24, 227, 279, 289–95, 301, 347–48, 354, 357–58, 390–91; P.S.F. at 10, 29, 55, 110, 114–17, 148–50, 154–55; Findings of Fact Nos. 13–14; C.C.R. at §118 (1985)). Yet, the evidence established, and the District Judge found, that misrepresentations and irregularities riddled the March 20 and August 9, 1985 executive sessions during which Greg Jones' transfer request was summarily

rejected.[7] (Findings of Fact Nos. 9–11, 13–29, 31–39; Conclusions of Law No. 2, 5–6).

The Trial Judge was appalled at the misconduct of these senior school administrators. (S.S.F. at 3–7, 15, 19). While all of the administrators admitted to the importance of extra-curricular activities in providing a well–rounded education for young people, they went to extremes in order to arbitrarily deny Greg Jones' right to participate in those developmental activities. As unconscionable as it may seem, these adults did so with the sole objective of furthering their petty high school football aspirations. The egregious conduct of these administrators is even more bizarre given the fact that Greg Jones was not a star football player at his previous high school.

The Trial Court, upon considering the extensive evidence presented, was convinced that the arbitrary and capricious actions of these educational administrators deprived Greg Jones of ever having a fair and impartial hearing in District 9AAAAA. (Findings of Fact Nos. 9–11, 13–21, 23–24, 26–28, 32–35, 37–39; Conclusions of Law Nos. 2, 5–6). The Trial Judge found that the improper actions of the Executive Committee violated the letter and the spirit of the Federal Constitutional standards expressed in Yick Wo, supra. The Trial Court took due note that the Supreme Court of Texas had recently announced that the Yick Wo equal protection standards would circumscribe the parameters of the constitutional

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[7]Furthermore, the District Judge found that the pervasive bias of the First Hearing also poisoned the Second Hearing. (Findings of Fact Nos. 31–39; Conclusions of Law Nos. 3–4; S.S.F. at 3–15, 19).

protection for students desiring to participate in extracurricular athletics.[8]

By the time of trial, the Petitioner had already obtained both a Temporary Restraining Order and a Temporary Injunction. After trial, the District Court rendered its final decision which granted a Permanent Injunction to the Petitioner. First, the Trial Court restrained the Executive Committee and the UIL from taking any action which would have prevented Greg Jones from participating in UIL–sponsored activities at HPHS. Second, the Trial Court attempted to protect HPHS from the Executive Committee, who threatened HPHS with sanctions for its mere obedience of the Trial Court's Order. (Conclusions of Law Nos. 1–7).[9]

The UIL's appeal was considered approximately one (1) year after the District Court's decision. At that time, Greg Jones had graduated, and the issue of his per se participation in HPHS activities had become moot. Nonetheless, the Court of Appeals, while holding that the case was moot, failed to

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[8] The District Court, in announcing its decision, relied extensively on this Court's pronouncements in Yick Wo, supra, as incorporated by the Texas Supreme Court in Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 559–60 (Tex. 1985), cert. denied, ___ U.S. ___, 106 S. Ct. 1170 L.Ed.2d ___ (1986). The Spring Branch I.D.S. case outlined the current constitutional parameters of students' rights to participate in extracurricular activities. In that decision, the Texas Supreme Court confirmed the rights of Texas students to equal protection of the laws under its earlier decisions and advised lower courts that an even–handed administration of the laws would be required under the standards of the Yick Wo case. Spring Branch I.S.D., supra at 559–60. Nothing less should be expected from school administrators in the 1980's.

[9] The protection of HPHS was made necessary by the threat of the Executive Committee's Chairman to impose sanctions on HPHS for following the District Court's Order should the District Court's trial decision have been overturned on appeal.

adjudicate the merits of several "live" issues which the Petitioner had preserved by an appropriate Cross–Appeal.[10]

The Petitioner, however, unlike other Texas citizens who have properly perfected points of appeal, never received a ruling on his Cross–Appeal from the Texas Appellate Courts. This unacceptable judicial evasion by these Texas Courts should be confronted by the Supreme Court. That is, should school administrators continue to perpetuate, with impugnity, such undesirable conduct and role models, the respect for individual rights would continue to deteriorate through harmful, but unchallenged, institutionalization. The youth of this nation deserve more—an unrestrained opportunity for individual development.

Action or inaction by this Court would influence, at least, Texas school administrators. Administrators must be "encouraged" to honor integrity, as they set policies which influence our youth. Frankly, the sole refuge for the wrong-doers herein is a Supreme Court that is too busy to appreciate the importance of this case. The Jones family, in Dallas, Texas, prays that justice is available.

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[10] For purposes herein, the relevant Cross–Appeal issues concerned the Petitioner's Cross–Appeal for his attorney's fees under 42 U.S.C. § 1988, and the confirmation of the Petitioner's Federal and State constitutional rights in view of the patently arbitrary and capricous conduct of the Executive Committee.

REASONS FOR GRANTING THE WRIT

I.

The Texas Courts Violated Compelling Federal Policy By Refusing To Award Attorney's Fees To The Petitioner, A Prevailing Party, Who Obtained Both: (1) Preliminary Injunctive Relief; And (2) Permanent Injunctive Relief, The Totality Of Relief Sought. (42 U.S.C. § 1988).

The Texas Courts, in an unusual twist of "justice," acknowledged the violations of Greg Jones' right to equal protection of the laws, but refused to grant him the entirety of the relief to which he was entitled.[11] The particular "live" issue in

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[11] The Trial Court found violations of equal protection. The Trial Court granted injunctive relief and found the value of reasonable and necessary attorney's fees, but denied, without justification, the fees to the prevailing party. The Court of Appeals acquiesced in the rulings of the Trial Court, but vacated the Trial Judgment, because the relief sought had been obtained, arguably rendering the injunction moot. Furthermore, the Court of Appeals refused to rule upon the properly perfected Cross–Appeal for an award of attorney's fees. The Supreme Court of Texas acquiesced in the ruling of the Court of Appeals and it, too, failed to rule upon the properly perfected Cross–Appeal for attorney's fees. Finally, as the UIL never challenged the refusal of the Court of Appeals to overturn any Finding of Fact, those facts are now binding upon the parties. Hill v. Miller, 714 S.W.2d 313, 314 (Tex. 1986); Wallace v. Scrogum, 372 S.W.2d 941, 941 (Tex. 1963). Kimbrough v. Walling, 371 S.W.2d 691, 693–94 (Tex. 1963); East Texas Motor Freight Lines v. Loftis, 148 Tex. 242, 223 S.W.2d 613, 615–16 (1949); Moore v. Dilworth, 14 Tex. 538, 179 S.W.2d 940, 942 (1944); See also Life Ins. Co. of N. Am. v. First Nat'l bank of Fort Worth, 464 S.W.2d 362, 363–64 (Tex. 1971); Smith v. Baldwin, 611 S.W.2d 611, 618 (Tex. 1981).

the history of this case remains the Petitioner's right to receive his award of reasonable attorney's fees. Greg Jones has satisfied the entirety of the prerequisites entitling him to such an award.

First, Greg Jones was a prevailing party. The Petitioner sought temporary and permanent injunctive relief from the Trial Court in order to prevent interference with his right to participate in extracurricular UIL activities at HPHS. As Greg Jones received the entirety of the injunctive relief which he sought, he satisfied the "prevailing party" standard under the Civil Rights Act. Hensley v. Eckerhart, ___ U.S. ___, 103 S. Ct. 1933, 1939, ___ L.Ed.2d ___ (1983) (A party need only succeed on any significant issue in litigation which achieves some of the benefits the parties sought in bringing suit.) Herein, the Petitioner succeeded on all "significant [i]ssues." Id.

The District Court granted the totality of the injunctive relief sought by Greg. Thus, the single remaining issue was for the District Court to have determined reasonable attorney's fees. See Doe v. Marshall, 622 F.2d 118, 120 (5th Cir. 1980) (A student is entitled to recover attorney's fees as a "prevailing party" even when only "preliminary relief" is obtained against UIL).

Fortunately, for this record, the District Court made an express finding of the reasonable and necessary attorney's fees incurred by the Plaintiff. (Finding of Fact No. 41). As each of the fee awards has been triggered by the appellate process, Fifty–Two Thousand Five Hundred Dollars ($52,500.00) of reasonable and necessary fees have been incurred by the Petitioner. Unfortunately, the unanticipated relcalcitrance of the Texas Appellate Courts has escalated the actual fees incurred to well in excess of One Hundred Thousand Dollars

($100,000.00) from this date. Such a sacrifice by the Jones family, who has a modest income, calls for significant action by this Court.

a.

Equal Protection Rights Are Extended To Interscholastic School Activities

There is no doubt that the Texas Courts, as well as Federal Courts, have recognized that the Constitutional provision for equal protection of the laws does extend to the right of students who seek self–development through extracurricular school activities. More specifically, those Constitutional equal protection rights have been extended to extracurricular athletics. See Spring Branch I.S.D., supra at 560–62 (Conduct of school administrators in managing students' extracurricular activities is to be measured by the United States Supreme Court pronouncements in, Yick Wo, supra); accord, Sullivan v. University Interscholastic League, 616 S.W.2d 170 (Tex. 1981); Brenden v. Independent School District 742, 342 F. Supp. 1224 (D Minn. 1972), aff'd, 477 F.2d 1292 (8th Cir. 1973).

In finding that Greg Jones' equal protection rights were violated, the Trial Judge herein expressly applied this Court's Yick Wo, standards to the egregious facts at bar. (Conclusion of Law No. 2). Moreover, the Trial Court made none of the exculpatory findings sought by the UIL. Instead, the Trial Court expressly found:

> 1. An arbitrary and discriminatory application of Rule 409 [the Transfer Rule] which violated equal protection principles honored by the

Texas Supreme Court and the United States Supreme Court. Spring Branch I.S.D., supra; citing Yick Wo, supra; accord, Sullivan, supra (Conclusion of Law No. 2);

2. The conduct of the voting members of the Executive Committee made evident that the Petitioner did not, and could not, receive a fair and impartial consideration of his transfer request. (Conclusions of Law Nos. 2, 5–6); and

3. The Executive Committee decisions denying Greg Jones' transfer request were null and void, because of the pervasive violation of the Petitioner's equal protection guarantees. Spring Branch, I.S.D., supra. (Conclusion of Law No.6).

It is not insignificant that it was a unanimous Texas Supreme Court which adopted the Yick Wo beacon as the prophylactic by which Texas students would be protected from the arbitrary, discriminatory or capricious actions of school administrators. Spring Branch, supra. While the Executive Committee's outrageous behavior, based upon false, misleading and unwholesome conduct, directly damaged only this one student and his family, a single student and his/her respective family should be worthy of Constitutional protection. More significantly, the unrestrained tendency for bureaucracies to continue misconduct in the absence of a meaningful sanction strongly suggests that the Supreme Court must take

some reasonable action to correct an unconscionable unjustice.[12]

b.

Familial Privacy Invasion

The conduct of the Executive Committee not only violated Greg's right to equal protection of the laws, but also perpetrated an impermissible infringement upon his family's fundamental right to privacy. The reasons for the family's move from Irving, Texas, to HPHS Independent School District in Dallas, Texas, are set forth in the Trial Court's specific Findings and Conclusions. (Findings of Fact Nos. 4–8, 22, 25, 27, 38; Conclusions of Law Nos. 3–4).

The Jones family moved from Irving in order to: (1) improve its station in life; (2) alleviate the parents' hectic commuting; and (3) accommodate the demanding dental school schedule of Greg's brother. (S.F. at 273–77, 526–43). The Executive Committee's punishment of Greg Jones interfered with the Jones' fundamental right to familial privacy and constituted an additional basis for an award of attorney's fees under Section 1983 et. seq. See also Aladdin's Castle, Inc. v. The City of Mesquite, 630 F.2d 1029, 1041 (5th Cir. 1980) (The right of association is fundamental and protects associational activities related to the family).

The Trial Court's Findings that the Jones family moved for

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12 The Jones family has been severely punished for protecting Greg's constitutional rights. Again, a review of the Trial Court's Findings leaves no other conclusion for those concerned, generally, with the moral direction of our society, children and educational systems. The Texas Courts, perhaps through inadvertence, actually condoned, by inaction, the violations of the Petitioner's right to equal protection of the laws.

proper purposes, on the one hand, and did not violate the UIL's rules, on the other hand, are Findings which are worthy of protection. The right of a family to make lateral or upward social movement is basic to the intrinsic advantages of a society such as ours.

The policy underscoring much of the progressive law enacted over the last thirty (30) years has been to stimulate the ability of all Americans to realize some of their hopes and aspirations. Specifically, the Courts have implicitly recognized that unjustifiable burdens upon a family's mobility in circumstances, similar to those herein, may be worthy of Constitutional protection. See, e.g., Niles v. University Interscholastic League, 715 F.2d 1027, 1031 (5th Cir. 1983); Maroney v. University Interscholastic League, 764 F.2d 403, 406 (5th Cir. 1985).

At trial, Mr. Jones, Greg's father, testified that: (1) the meaningful fabric of his family was coming apart; and (2) the move to Highland Park greatly alleviated the economic and personal pressures upon the family; which (3) resulted in the overall improvement of the family's economic and emotional circumstances. Mr. Jones' testimony was confirmed and corroborated by other witnesses. (S.F. 273–77, 302–59, 368–79, 527–604; Findings of Fact Nos. 4–8, 22, 25, 27, 38; Conclusions of Law Nos. 3–4).

Unlike the Plaintiff in the Niles, supra case, however, Greg Jones never asserted a Constitutional right to participate in interscholastic sports. Rather, the Petitioner complained, because the established rules were not equally, reasonably, or fairly applied to him, as they were to all other students in similar circumstances. Moreover, the Petitioner had asserted violations of his family's Constitutional right to make, without unreasonable interference, those decisions relating to family

relationships, child rearing and education. See Southerland v. Thigpen, 784 F.2d 713, 175 (5th Cir. 1986) ("...[a]mong the decisions that an individual may make without justified governmental interference are personal decisions relating to family relationships ... and child rearing and education."); accord, Whalen v. Roe, 429 U.S. 589, 600 n. 26, 97 S. Ct. 869, 876–77 n. 26, 51 L.Ed.2d 64 (1977); Carey v. Population Service International, 431 U.S. 678, 684–86, 97 S. Ct. 2010, 2016, 52 L.Ed.2d 675 (1977).

Thus, Greg Jones, unlike the Plaintiff in Niles, has not used the familial privacy claim as a mere afterthought. Instead, the Petitioner's complaints regarding familial privacy violations have been constant from this suit's inception. That is, it was a genuine family motive which inspired in the move to Highland Park, and the family has suffered by virtue of the Executive Committee's reprehensible conduct.

The Executive Committee's witnesses, on adverse examination, admitted the essential societal role of a strong familial unit. (S.F. 108–09; P.S.F. at 107–109). Notwithstanding the UIL witnesses' abstract support for the family unit, the Executive Committee's actions were devastating to the Jones' family structure. The Executive Committee's actions were calloused, self–righteous and bordered on fanaticism. Absent this Court's intervention, there is no reason to believe that these egregious injustices would cease.

c.

The Texas Courts Failed to Shoulder Their Responsibility

Greg Jones was entitled to equal protection of the laws in connection with his desire to participate in extracurricular UIL activites. Second, the UIL's unjustified invasions of the Jones' familial privacy must condemned. It is undisputed that the Petitioner was a "prevailing party" in obtaining the totality of injunctive relief which was sought in the case. The Trial Court found that Fifty–Two Thousand Five Hundred Dollars ($52,500.00) would constitute reasonable and necessary fees which the Petitioner would have incurred from the trial through the Texas appellate process. (Finding of Fact No. 41).

Nonetheless, the Trial Court declined to award those fees because of its uncertainty regarding the extent of Federal protection. Under these circumstances, therefore, the failure to award attorney's fees frustrates the very important Federal policies underlying the Civil Rights Act, and that error should be corrected by the unqualified action of this Court.

II.

The Texas Appellate Courts, In Order To Avoid A Confrontation With Well-Settled Federal Policy in Civil Rights Litigation, Violated The Equal Protection Rights Of The Petitioner By Refusing To Acknowledge, Consider, Rule Upon And Grant The Petitioner's Properly Perfected Points Of Error Re-

questing An Award Of Attorney's Fees.

III.

The Texas Appellate Courts, In Order To Avoid A Confrontation With Well-Settled Federal Policy in Civil Rights Litigation, Violated the Petitioner's Due Process Rights by Refusing To Acknowledge, Consider, Rule Upon and Grant The Petitioner's Properly Perfected Points Of Error Requesting An Award Of Attorney's Fees.

The Petitioner addressed the violations of his Constitutional rights in Part I, hereinabove. The Trial Court's Findings of Fact, which support the Petitioner's entitlement, are now binding upon the parties. Supra at 13 n. 11. The UIL did not convince the Court of Appeals to overturn any of the Trial Court's Findings, and it neglected to perfect any error in that regard by presenting a Motion for Rehearing. Id.

The UIL's failure to challenge the refusal of the Court of Appeals to overturn any of the Findings of Fact resulted in: (1) a waiver of any challenge of those Findings; and (2) the Texas Supreme Court's loss of jurisdiction to review any of the UIL's complaints:

> "It is settled that a point of error in [a] motion for rehearing filed in the Court of Civil Appeals complaining of a matter determined by that Court is a prerequisite to our jurisdiction to consider and act thereon." (emphasis added).

Smith v. Baldwin, supra; accord, Wallace, supra at 941.

Yet, in order to "duck" the hard question regarding Greg's right to recover his attorneys' fees, the Texas Appellate Courts simply refused to acknowledge, consider or rule upon Greg's prefected points of error requesting an award of attorney's fees. Greg's Cross–Appeal was duly perfected, and complaint was made by an appropriate Motion for Rehearing to both the Court of Appeals and the Supreme Court. Greg Jones was, therefore, entitled to a ruling thereon.

Texas Courts have recognized that a litigant's right to have points of error considered and ruled upon is absolute. Prairie Cattle Co. v. Fletcher, 610 S.W.2d 850, 852 (Tex. Civ. App.—Amarillo 1980, no writ) (Court is "required to pass upon [perfected points of error]."); accord, Fambrough v. Wagley, 140 Tex. 577, 169 S.W.2d 478, 480 (1943); Williams v. Capital County Mutual Fire Ins. Co., 594 S.W.2d 558, 560 (Tex. Civ. App.—Ft. Worth 1980, no writ) (Court is obligated to pass on points of error, even inartfully drafted points of error).

Since the Petitioner has graduated from HPHS, the issue of his participation in UIL activites at HPHS is now moot. However, Greg Jones' graduation does not detract from the significance of his claim for attorney's fees as the prevailing party. See Hensley, supra; Doe, supra; Hennigan v. Quachita Parish School Bd., 749 F.2d 1148, 1150–51 (5th Cir. 1985) (Right to attorney's fees even if plaintiff's goal becomes moot). Finally, claims for attorney's fees, even under Texas law, are considered severable and require consideration on the merits. See Texas Employment Com'n. v. Camarena, 710 S.W.2d 665, 670 (Tex. App.—Austin 1986, no writ); accord, Texas Dep't of Health v. Hejl, 607 S.W.2d 34, 35 (Tex. Civ.

App.—Austin 1980, no writ); Walsh v. Walsh, 562 S.W.2d 501, 502–03 (Tex. Civ. App.—San Antonio 1978, no writ) Hand v. State, 348 S.W.2d 72, 74 (Tex. Civ. App.—Houston [14th Dist] 1961, no writ).

Inexplicably, the Court of Appeals' Opinion and Judgment completely ignored the legal issue of Greg Jones' entitlement to attorneys fees. See Opinion at 2–3. Yet, Texas Appellate Procedure entitles a litigant to a ruling on properly perfected points of appeal. See Prairie Cattle Co., supra; Fambrough, supra; Williams, supra. Such a judicial failure constituted another error of equal protection and due process dimensions. That is, the Court of Appeals erroneously vacated the Trial Court's Judgment and dismissed the action on the basis of mootness, while "live" issues remained for ajudication. Other citizens similarly situated have received appellate rulings on their perfected points of error. Greg Jones seeks no more than has been provided, as a matter of right, to other citizens.

IV.

The Case Should Be Remanded, For A Limited Review, To The State District Court For A Complementary Fee Award For Additional Services Rendered In This Court

The Petitioner would respectfully show that the District Court's Finding of Fifty–Two Thousand Five Hundred Dollars ($52,500.00) as reasonable and necessary attorneys fees is now binding upon the parties. However, it was not contemplated by either the District Court or any of the parties, that the Court of Appeals and the Texas Supreme Court would refuse to rule upon properly perfected points of error.

Federal policy emphasizes the need to prosecute bona fide Civil Rights Act actions. Therefore, the Petitioner would respectfully request, in the interest of justice, that this Court remand the attorney's fee issue for determination of an appropriate fee complement to be awarded for the instant Petition to the United States Supreme Court.

Ostensibly, had the lower Courts ruled upon the Petitioner's perfected points of error, the ensuing appellate expense would not have been so substantial. Certainly, the Petitioner should not have become the victim of the lower courts' failure to abide by their respective procedural obligations under State and Federal law.

The lower Courts should not be permitted to frustrate the essential goals underlying the Civil Rights Act. Their respective refusals to rule upon and grant the Petitioner his already determined attorney's fees thwart that policy. Hence, the Petitioner, the prevailing party below, would respectfully request that the Court order a limited remand.

V.

CONCLUSION

The Trial Court's Findings reveal the uncontained contagion now spreading throughout the corpus of those Texas school districts whose interscholastic activities are governed by the UIL. The Executive Committee and the UIL have not only violated this student's constitutional rights, but have, thus far, done so with absolute impunity.

Despite the UIL's admissions from the witness stand that administrative matters, such as Greg Jones' transfer request, should be handled within the bounds of fairness and due

process, the Executive Committee acted in direct contravention of its own express policies. The Executive Committee punished Greg Jones, only, because it sought to advance its own petty football aspriations. Yet, under the law, this young honor student should have been treated like all other students similarly situated.

The Jones case received a good deal of publicity in professional periodicals in the State of Texas. Educators with integrity and professional commitment must be highly embarassed by the conduct of these errant administrators. Such professional educators would not want the Supreme Court to tolerate the Executive Committee's incorrigible abuse of fundamental standards of fairness with regard to student administration.

It is true, and the Petitioner does not dispute, that recent Federal decisions have limited a student's right to participate in extracurricular activities. Yet, on the same hand, these Federal Courts have not condoned actions which have denied either equal protection under the laws or invasions of familial privacy. See, e.g., Maroney v. UIL, supra (Fifth Circuit recognizing limited rights).

Nonetheless, and it must be emphasized, this Court is not faced with: (1) a recruiting violation; (2) a student athlete with failing grades; or (3) a student who claims a Constitutional right to participate in extracurricular activities. Greg Jones is very different. The Petitioner was: (1) an honor student; (2) well–respected by his peers and teachers; (3) an exemplary student from the standpoint of citizenship and character; and (4) abided by the UIL rules in seeking to enrich his educational experience at HPHS.

The UIL witnesses testified that "King Football" in the State of Texas does offer young students a meaningful devel-

opmental experience. For example, football provides an opportunity for new associations and the development of meaningful friendships, or social relationships, as well as an understanding of teamwork and sacrifice for the benefit of others.

On the other hand, "King Football" is not, in and of itself, a justification for errant school administrators to place "greater burdens ... upon one than are laid upon others in the same condition...," or to allow the Executive Committee, without restriction, to withhold or give consent at its "near will and pleasure." Yick Wo, supra at 1070. As this Court said approximately one hundred (100) years ago, "[I]t is the execution of the regulation which constitutes the 'unjust and illegal discrimination' which should be struck down." Yick Wo, supra at 1071.

Rule 409, the "Transfer Rule," may appear fair on its face. However, as constructed, Rule 409 "reserves an arbitrary discretion in the enacting body," thus enabling such body to effect a discrimination against any class it so chooses to victimize. See Yick Wo, supra at 1069–70.

Herein, the effect of the Executive Committee's illegitimate application of Rule 409 was to consciously eradicate an imagined HPHS "darkhorse" quarterback, at the expense of an innocent student's physical and educational development. Based upon the undisputed evidence, the Executive Committee's wanton and freakish decision was not made to effectuate UIL policy, but rather to ensure Greg Jones' unavailability to HPHS. The Executive Committee's blatant discrimination violated precious rights secured by the Fourteenth Amendment. See Yick Wo, supra at 1069–72.

This case is not about football. Instead, this case stands for: (1) the right of students to be treated fairly and impartially

by school administrators who should conduct themselves in a fair and even–handed manner; and (2) preventing unjustifiable interference with an American family's right to lateral or upward social mobility. Certainly, this case should not represent, which it now does, the unfettered ability of school administrators to discriminate against students in order to foster "King Football" at the expense of protected, individual rights. This honor student, and the others who will inevitably follow, deserve a responsive judicial admonishment of the UIL. Furthermore, this Petitioner, as the "prevailing party," is entitled to an award of his significant attorney's fees.

WHEREFORE, PREMISES CONSIDERED, Greg Jones respectfully prays that the Supreme Court grant his Petition for Writ of Certiorari, that the Supreme Court reverse or modify the Judgments of the Courts below to the extent that Greg Jones recover the reasonable and necessary attorney's fees determined below, or, alternatively, that the action be remanded to the State District Court for a limited consideration as to whether or not additional attorney's fees should be awarded in connection with the Petitioner's Petition to this Court, and for such other and further relief, whether at law or in equity, to which the Supreme Court believes that Greg Jones may be justly entitled.

Respectfully submitted,
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By _____
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been mailed, certified, return receipt requested to Peter Nolan, Esq., counsel for Respondents, on this the 20 day of May, 1987.

_____
SAMUEL L. BOYD